

HOWARD A. SLAVITT (State Bar # 172840)
COBLENTZ, PATCH, DUFFY & BASS, LLP
One Ferry Building, Suite 200
San Francisco, California 94111-4213
Telephone: (415) 391-4800
Facsimile: (415) 989-1663
E-mail: has@cpdb.com

MICHAEL N. RADER (admitted pro hac vice)
CHARLES T. STEENBURG (admitted pro hac vice)
WOLF, GREENFIELD & SACKS, P.C.
600 Atlantic Avenue
Boston, MA 02210-2206
Telephone: (617) 646-8000
Facsimile: (617) 646-8646
E-mail: mrader@wolfgreenfield.com
csteenbur@wolfgreenfield.com

Attorneys for Defendant biolitec, Inc.

(Counsel for Other Defendants Listed on Last Page)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

TYCO HEALTHCARE GROUP LP d/b/a
VNUS MEDICAL TECHNOLOGIES,

Plaintiff,

v.

BIOLITEC, INC.

Defendant.

TYCO HEALTHCARE GROUP LP d/b/a
VNUS MEDICAL TECHNOLOGIES,

Plaintiff,

v.

TOTAL VEIN SOLUTIONS, LLC. d/b/a
TOTAL VEIN SYSTEMS,

Defendant.

Case No. C08-03129 MMC

Case No. C08-04234 MMC

(consolidated with Case No. C08-03129 MMC)

**JOINT STIPULATED MOTION AND
[PROPOSED] ORDER BY VNUS AND
BIOLITEC FOR DISMISSAL OF
BIOLITEC AND PARTIAL VACATUR OF
VERDICT**

AND ORDER THEREON

Judge: The Hon. Maxine M. Chesney

1 WHEREAS, Plaintiff Tyco Healthcare Group LP d/b/a VNUS Medical Technologies
 2 (“VNUS”) and Defendant biolitec, Inc. (“biolitec”) have entered into a Settlement Agreement
 3 resolving all claims asserted by VNUS against biolitec and all counterclaims asserted by biolitec
 4 against VNUS in the above-captioned action;

5
 6 WHEREAS the Settlement Agreement expressly contemplates the dismissal and vacatur
 7 provided for herein, so that dismissal and vactur will resolve all open litigation issues between
 8 VNUS and biolitec, including without limitation those matters recited in the preamble to the
 9 Settlement Agreement;

10
 11 NOW THEREFORE, VNUS and biolitec hereby jointly stipulate and respectfully move
 12 the Court for a confirmatory order as follows:

- 13
 14 1) The portions of the December 8, 2010 verdict (D.I. 441) corresponding
 15 specifically to biolitec (i.e., questions 1, 2, 3, 8a & 8b) are hereby VACATED
 16 pursuant to Fed. R. Civ. P. 60(b). *See Thomas v. City of Tacoma*, 410 F.3d 644,
 17 647 n.2 (9th Cir. 2005); *Click Entm’t, Inc. v. JYP Entm’t Co.*, 2009 WL 3030212,
 18 at *1 (D. Haw. 2009);
- 19 2) biolitec is dismissed with prejudice from this action pursuant to Federal Rule of
 20 Civil Procedure 41(a)(2);
- 21 3) The counterclaims asserted by biolitec against VNUS are dismissed with prejudice
 22 pursuant to Federal Rule of Civil Procedure 41(c);
- 23 4) Each party will bear its own costs; and
- 24 5) The caption shall be amended in all subsequent pleadings to reflect this dismissal.

COBLENTZ, PATCH, DUFFY & BASS, LLP
One Ferry Building, Suite 200, San Francisco, CA 94111-4213
(415) 391-4800 • fax (415) 989-1663

1 Dated: September 8, 2011

ATTORNEYS FOR PLAINTIFF
TYCO HEALTHCARE GROUP LP d/b/a
VNUS MEDICAL TECHNOLOGIES

2
3
4 By: /s/ Matthew B. Lehr
Matthew B. Lehr (Bar No. 213139)
Diem-Suong T. Nguyen (Bar No. 237557)
DAVIS POLK & WARDWELL LLP
1600 El Camino Real
Menlo Park, CA 94025
5
6
7 (650) 752-2000/(650) 752-2111 (fax)
8 mlehr@dpw.com
nguyen@dpw.com
9

10 Dated: September 8, 2011

ATTORNEYS FOR DEFENDANT BIOLITEC, INC.

11 By: /s/ Michael N. Rader
12 Michael N. Rader (*pro hac vice*)
13 Allen S. Rugg (*pro hac vice*)
14 Charles T. Steenburg (*pro hac vice*)
WOLF, GREENFIELD & SACKS, P.C.
15 600 Atlantic Avenue
Boston, MA 02210
16 (617) 646-8000/(617) 646-8646
mrader@wolfgreenfield.com
17 arugg@wolfgreenfield.com
18 csteenburg@wolfgreenfield.com

19 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

20
21 Dated: September 9, 2011

22
23 
24 THE HON. MAXINE M. CHESNEY
25 United States District Judge
26
27
28